

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.229 of 2015

ORDER:

This Civil Revision Petition under Section 115 of the Code of Civil Procedure is filed by the petitioner/judgment-debtor challenging the Order dt.31.12.2014 in E.A.No.4 of 2010 in E.P.No.6 of 2010 in O.S.No.1283 of 2004 passed by the IV Additional Junior Civil Judge, Rajahmundry, East Godavari District dismissing the application filed under Order XXI Rule 106(4) of CPC to condone the delay of 310 days in filing the petition to set aside the sale dated 02.09.2008 of E.P. schedule property which was held in E.P.No.28 of 2007 in O.S.No.1283 of 2004.

2. The respondents obtained decree and filed execution proceedings for realization of the debt due by attachment and for sale of the property under Order XXI Rule 59 of C.P.C. and later the property was brought for sale. But, the contention of the petitioner before the Court is that he paid Rs.42,000/- to the counsel on record and filed a joint memo before the Court and copy of the memo is also filed before the executing Court.

3. The specific reason assigned by the petitioner is that the auction was conducted in collusion with the decree-holder and auction purchaser and there are irregularities in knocking down the bid in favour of the auction purchaser for Rs.3,10,000/- though the value of the property was Rs.15 lakhs as per the basic value register in the Sub-Registrar Office and thus, the decree-holder played fraud on the Court and brought the property for sale and the bid was knocked down. The petitioner came to know about the sale

recently and thereby there is a delay in filing the petition to set aside the same under Order XXI Rule 89 of CPC as the sale was held on 02.09.2008 and therefore, filed a petition under Order XXI Rule 106(4) of C.P.C. to condone the delay of 310 days in filing the petition under Order XXI Rule 89 of C.P.C. and prayed to condone the delay.

4. The respondents filed counter denying the material allegations while contending that there is no sufficient cause which prevented the petitioner to file a petition within time allowed by the Court under Order XXI Rule 89 of C.P.C. Therefore, the Court cannot condone such abnormal delay in filing such petition and prayed to dismiss the petition.

5. Upon hearing the argument of both the counsel, the Executing Court concluded that the petitioner filed petitions one after another under different provisions to protract the matter for some time and that the petitioner did not establish the cause which prevented him much less the sufficient cause in filing the application to condone the delay and dismissed the petition.

6. Aggrieved by the order passed by the executing Court, the present revision under Section 115 of C.P.C. is filed raising specific contention that the petitioner paid Rs.42,000/- before bringing the property for sale, to the counsel on record appearing for the decree-holder and though the amount was not certified, a memo is available on record in the court. Therefore, sale was held ignoring the amount already paid to the decree-holder's counsel and bid was knocked down in favour of the third party for Rs.3,10,000/-

though the actual value of the property was Rs.10,30,000/- and that the petitioner was prevented by sufficient cause in filing the application to condone the delay, but the executing Court did not consider the sufficient cause shown by the petitioner and dismissed the petition.

7. During hearing, this Court raised an objection about the maintainability of application under Order XXI Rule 106(4) of C.P.C. to condone the delay in filing the petition under Order XXI Rule 89 of CPC and the learned counsel for the petitioner would contend that the sale was vitiated by fraud and in such a case, the petitioner can invoke Order XXI Rule 106(4) of C.P.C. to condone the delay.

8. Undisputedly, Section 5 of Limitation Act deals with extension of prescribed period in certain cases. —Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

9. The application of Section 5 of Limitation Act is exempted to Order XXI Rule 106 of CPC by the State of Andhra Pradesh incorporated Clause 4 by Gazette Notification dated 30.11.1992, Section 5 of Limitation Act is made applicable to the applications filed under Order XXI, Rule 106 of C.P.C. which permits the parties to file an application to condone the delay applying Section 5 of the Limitation Act. This Court in SALE RANGA SWAMY v. SPECIAL

COLLECTOR ETC.¹ held that the Court can condone the delay in filing an application to set aside the *ex parte* order and similar view was expressed in CH. KRISHNAIAH v. CH. PRASADA RAO² Full Bench of this Court and in view of the law declared by the Full Bench of this Court, sub-rule 4 of 106 is applicable only for condonation of delay in a petition filed for setting aside the *ex parte* order but not for the petitions filed under Order XXI Rule 89 of C.P.C. Sub-rule 4 is incorporated only to enable the Court to condone delay in petitions filed under Rule 106 of Order XXI C.P.C. However, there is any amount of doubt about the validity of the amendment in view of Section 29 of the Limitation Act which deals with Savings.— Clause (2) deals with certain limitations prescribed for some special or local law which reads as follows:

“Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

10. At best, sub-section 2 permits the authorities under law to prescribe special limitation as per special or local law to any suit, appeal or application the period of limitation different from the period prescribed in the schedule.

¹ 2004(3) ALD 83

² AIR 2010 AP 19 Full Bench

11. But, here Order XXI Rule 106 of C.P.C. is not covered by schedule, but still this Court amendment was effected to Order XXI Rule 106 of CPC by incorporating sub-rule 4. Without amending the Principal Act i.e. Limitation Act which prohibits application of section 5 to Order XXI of C.P.C. Unless the Principal Act is amended, the amendment if any applying Section 5 to applications under Order XXI Rule 106 of CPC is contrary to the intention of the Legislature incorporating Section 5 of Limitation Act. However, it is not the appropriate case to decide validity of the amendment.

12. As seen from the material on record, it is clear that Section 5 of Limitation Act has no application to Order XXI Rules 89 and 90 of C.P.C. Hence, this application is not maintainable. However, it is left open to the parties to redress remedies in appropriate Forums.

13. With the above observations, the civil revision petition is dismissed. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 20-04-2017.
ccm

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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